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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/690,273	10/17/2000	Fan Kong	CSCO2337	2199

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EXAMINER

KISS, ERIC B

ART UNIT PAPER NUMBER

2192

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/690,273

Applicant(s)

KONG, FAN

Examiner

Eric B. Kiss

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7,9-20,22-26 and 40-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-20,22-26 and 40-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7 June 2005 has been entered.

Claims 1-7, 9-20, 22-26, and 40-53 are pending.

### ***Response to Amendment***

2. Applicant's amendments to claims 47 and 52 appropriately address the objection to these claims based on informalities. Accordingly, this objection is withdrawn in view of Applicant's amendments.

### ***Response to Arguments***

3. Applicant's arguments, see pp. 11-25, filed 7 June 2005, with respect to the rejections of claims 1-7, 9-20, 22-26, and 40-53 under 35 U.S.C. §§103(a) and 112 have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the judicially created doctrine of obviousness-type double patenting.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-7, 9-20, 22-26, and 40-53 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-17 and 33-42 of copending Application No. 09/896,044. Although the conflicting claims are not identical, they are not patentably distinct from each other. The following are some examples of how the claims of the instant application may be considered obvious variations of the claims of the '044 application:

Claim 1 of the instant application recites: *creating and storing a linear command regeneration template that includes at least one linear node template in a memory, each linear node template corresponding to a command element in said configuration command* (a linear parse tree containing linear nodes representing command elements stored in memory and written to a command regeneration template, as recited in claims 7 and 33 of the '044 application).

Claim 1 of the instant application further recites: *regenerating said configuration command based on said linear command regeneration template and based on data from the*

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*configuration database*. Although the '044 application claims such a regeneration template, but fails to claim such regeneration based on data from a configuration database, such regeneration is admitted prior art and is further a stated known use of similar structures (see the instant specification, pp. 1-2). Therefore, a person of ordinary skill in the art would conclude that the invention defined in claim 1 of the instant application is an obvious variation of the invention defined in claim 33 of the '044 application.

Claims 2-5 of the instant application recite the linear node template comprising a begin option node, a next option node, and an end option node. Such option nodes are also recited in claim 7 of the '044 application.

As per claims 6, 7, and 9-13, the regeneration step has been addressed as set forth above. Further, the '044 application claims such linear node templates, begin option node identification, end option node identification, and branch information (see, for example, claims 7-10).

Claims 14-20 and 22-26 of the instant application are computer-readable medium versions of claims 1-7 and 9-13. Such "Beauregard claims" recite the known (and therefore obvious) implementation of computer software as computer-readable media.

Claims 40-46 are means-plus-function apparatus versions of claims 1-7. The claims of '044 application cited above recite equivalent structure to that disclosed in instant claims 1-7.

Claims 47-50 recite method versions of claims discussed above.

As per claims 51 and 52, see claims 11 and 12 of the '044 application.

As per claim 53, see the claims of the '044 application cited above. Further, the validation of configuration data using parse trees is further admitted prior art (see the instant

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specification, pp. 1-2) and, for reasons stated above, is also believed to be an obvious variation of the claims of the '044 application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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*Conclusion*


6. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric B. Kiss whose telephone number is (571) 272-3699. The Examiner can normally be reached on Tue. - Fri., 7:00 am - 4:30 pm. The Examiner can also be reached on alternate Mondays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Tuan Dam, can be reached on (571) 272-3695. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature should be directed to the TC 2100 Group receptionist: 571-272-2100.

EBK /ERK  
July 8, 2005

  
**WEI Y. ZHEN**  
**PRIMARY EXAMINER**